DOCKET NO: NNH-CV-23-6135336-S	:	SUPERIOR COURT
SHAFIQ ABDUS-SABUR, ET AL	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT NEW HAVEN
SHANNEL EVANS, ET AL	:	AUGUST 29, 2023

Judicial District of New Haven
SUPERIOR COURT
FILED
AUG 29 2023
CHIEF CLERK'S OFFICE

MEMORANDUM OF DECISION

Plaintiffs Shafiq Abdus-Sabur (Abdus-Sabur), Democratic candidate for mayor of the city of New Haven, and Robert Lee (Lee), Democratic candidate for town clerk in the city of New Haven, allege they were aggrieved by decisions of defendants Shannel Evans (Evans), the Democratic registrar of voters for the city of New Haven, and Michael Smart (Smart), the town clerk for the city of New Haven, in which Evans and Smart rejected certain of Abdus-Sabur and Lee's petition signatures and thereafter denied them a spot on the September 12, 2023 Democratic primary ballot for mayor of New Haven and town clerk of New Haven, respectively.

On July 25, 2023, the New Haven Democratic Town Committee held its municipal nominating convention. Abdus-Sabur and Lee did not receive the party endorsements, so on July 26, 2023, they began the petition process to secure spots on the ballot in the Democratic primary for mayor and town clerk. Abdus-Sabur and Lee were informed by Evans that they needed to obtain 1623 signatures from registered Democrats who reside in New Haven on or before August 9, 2023, to secure a spot on the Democratic primary ballot. On and before August 9, 2023, the Abdus-Sabur and Lee campaigns submitted 2,700 petition signatures, and Evans provided the Abdus-Sabur and Lee campaigns with receipts of their foregoing submissions.

On August 16, 2023, Evans notified the Abdus-Sabur and Lee campaigns that only 1,406 of their submitted 2,700 petition signatures had been approved and qualified. Thus, the campaigns were short 217 petition signatures to secure spots on the Democratic primary ballot.

Abdus-Sabur and Lee allege that of the 1,394 rejected petition signatures, 217 or more were valid signatures, and they should therefore be placed on the ballot for the primary.

On August 17, 2023, Abdus-Sabur and Lee filed the instant lawsuit pursuant to General Statutes §§ 9-328 and 9-329a seeking an injunction ordering Evans and Smart to approve sufficient signatures so that Abdus-Sabur and Lee would qualify for the Democratic primary ballot for mayor and town clerk, respectively. The court ordered the parties to appear at a hearing on August 23, 2023. At the hearing, the court found statutory notice to be achieved, and Evans and Smart informed the court that they intended to file a motion to dismiss forthwith. With the consent of the parties, the court issued the following scheduling order for the defendants' motion to dismiss: (i) Evans and Smart were required to file their motion to dismiss by 5 p.m. on August 24, 2023; (ii) Abdus-Sabur and Lee were required to file their objection to the motion to dismiss by 5 p.m. on August 25, 2023; and (iii) the parties will have the opportunity to participate in remote oral arguments on August 28, 2023. The parties did participate in a remote oral argument on August 28, 2023.

In their motion to dismiss (Entry #108), Evans and Smart argue that the court does not have subject matter jurisdiction because of the *Purcell* doctrine, as originated in the United States Supreme Court decision of *Purcell* v. *Gonzalez*, 549 U.S. 1, 127 S. Ct. 5, 166 L. Ed. 2d 1 (2006), and therefore the present lawsuit should be dismissed.

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Fay* v. *Merrill*, 336 Conn. 432, 445, 246 A.3d 970 (2020). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . When a . . . court decides a . . . question raised by a pretrial

motion to dismiss, it must consider the allegations of the complaint in their most favorable light. . . . In this regard, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . The motion to dismiss . . . admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone." (Internal quotation marks omitted.) *Wilkins* v. *Connecticut Childbirth & Women's Center,* 314 Conn. 709, 718, 104 A.3d 671 (2014).

"[A] motion to dismiss . . . is the appropriate procedure for challenging subject matter jurisdiction." *Machado* v. *Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . . The subject matter jurisdiction requirement may not be waived by any party, and also may be raised by a party, or by the court sua sponte, at any stage of the proceedings . . . ." (Internal quotation marks omitted.) *Keller* v. *Beckenstein*, 305 Conn. 523, 531-32, 46 A.3d 102 (2012). "[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Financial Consulting, LLC* v. *Commissioner of Ins.*, 315 Conn. 196, 226, 105 A.3d 210 (2014).

In *Purcell*, the plaintiffs were Arizona residents, tribes, and community organizations who sued the state of Arizona, challenging its new voter identification requirements that were approved by Arizona voters in 2004. *Purcell* v. *Gonzalez*, supra, 549 U.S. 2-3. In its per curium decision of October 20, 2006, the United States Supreme Court did not decide the case on the merits but instead decided to allow the election of November 7, 2006, to go forward on its then-existing election rules because "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase. . . . We underscore that we express no opinion here on the correct disposition. . . . Given the imminence of the election and the inadequate time to resolve the factual disputes, our action today shall of necessity allow the election to proceed without an injunction suspending the voter identification rules." (Citation omitted.) Id., 4-6.

The *Purcell* court focused on preserving the continuity of the impending election so as to avoid voter confusion and voter apathy, which led to the creation of the legal rationale known as the *Purcell* principle. Since the release of *Purcell* in 2006, courts have applied the Purcell principle in many cases.

In the present case, the Democratic primary election of September 12, 2023, began when Smart printed and made absentee ballots available on August 22, 2023, in accordance with General Statutes § 9-140 (f). The endorsed Democratic candidates for mayor and town clerk as well as the qualified challengers have been campaigning for the primary election. With voting already having begun and election day approaching, the *Purcell* principle is applicable to the present case. If a restraining order to enjoin the printing of the absentee ballots had been sought

and achieved, the primary election would not have begun, and the risk of voter confusion and negative impact on the election would not be at issue.

In *Fay v. Merrill*, supra, 336 Conn. 452 n.23, the Connecticut Supreme Court held it lacked jurisdiction over the action at issue and, in a footnote, referenced but did not apply the *Purcell* principle: "Similarly, the court need not consider the defendant's argument that it should abstain from exercising jurisdiction over this case, which involves an impending election, under the principle announced in *Purcell* v. *Gonzalez*, [supra, 549 U.S. 4-5]." Likewise, the Connecticut Supreme Court again acknowledged the *Purcell* principle in a footnote when it considered a challenge to the then-new COVID-19 grounds for issuing absentee ballots: "As was discussed at oral argument before this court, the actual enforcement of any declaratory judgment that could have been rendered in the plaintiffs' favor with respect to the August primary would have raised significant practical issues for consideration by a trial court in the first instance. Consideration of these issues presumably would implicate the factors identified by the United States Supreme Court in *Purcell v. Gonzalez*, [supra, 549 U.S. 1], which held that a court considering injunctive relief in an election law matter is required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases and its own institutional procedures. Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase. . . . The *Purcell* principle remains applicable in the context of COVID-19." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Fay v. Merrill*, 338 Conn. 1, 23 n.21, 256 A.3d 622 (2021).

In a footnote regarding an issue of laches in *Fay*, our Supreme Court referenced a United States District Court case that had a timing issue similar to the one in the present case. See id., 22

n.19 (discussing District Court's "finding [that] timing of request for preliminary injunctive relief [was] unreasonable when brought twenty-six days before primary and after [mail in] ballots [had] been sent to Nevada voters and a substantial number of eligible voters . . . [had] already sent in their [mail in] ballots" [internal quotation marks omitted]).

In *Dean* v. *Jepsen*, Superior Court, judicial district of Hartford, Docket No. CV-10-6015774 (November 3, 2010, *Aurigemma, J.*) (51 Conn. L. Rptr. 111, 115), the court dealt with a late challenge to the qualifications of an attorney general candidate, and in its rationale for granting the motions to dismiss, the court invoked the *Purcell* principle: "[T]he plaintiff's request for a declaratory judgment does not protect the public's interest in orderly elections. As of the filing of the plaintiff's complaint, just seven days prior to the election, the election process has already been well under way . . . . The secretary of the state argues that thousands of ballots have already been printed, and absentee ballots have already been cast. Equally important, the voters have been exposed to extensive campaigning by both parties. The publicity regarding any type of court order with only a few days left before an election has the potential of casting a cloud of uncertainty on the candidates, which cannot be adequately resolved prior to election day. Thus, by filing her action so close to the election, the plaintiff risks injecting impermissible confusion and disruption in the election process. See, e.g., *Purcell* v. *Gonzalez*, [supra, 549 U.S. 4-5] . . . ." The *Dean* court also cited the case of *Caruso* v. *Bridgeport*, 285 Conn. 618, 941 A.2d 266 (2008). See *Dean* v. *Jepsen*, supra, 115. In *Caruso*, the Connecticut Supreme Court held that "[t]he delicacy of judicial intrusion into the electoral process . . . strongly suggests caution in undertaking such an intrusion. . . . [because] voters have a powerful interest in the stability of [an] election . . . ." (Citation omitted; internal quotation marks omitted.) *Caruso* v. *Bridgeport*, supra, 637.

Other cases are distinguishable from the instant case regarding the start of the primary election process. In *Nardello* v. *Merrill*, Superior Court, judicial district of Waterbury, Docket No. CV-18-5022319-S (July 10, 2018, *Agati, J.*) (66 Conn. L. Rptr. 711), the court conducted its hearing and issued its injunction prior to the issuance of absentee ballots and commencement of primary election voting. In a challenge to petition signatures in a Bloomfield Democratic Town Committee primary election, the parties to the litigation voluntarily stipulated to a new primary date and schedule before the court conducted its hearing and issued its decision, which avoided any impact on the election schedule. *Klein* v. *Mitchell*, Superior Court, judicial district of Hartford, Docket No. CV-22-6152172-S (March 8, 2022, *Budzik, J.*). In the present case, there is no such stipulation by the parties. In a case in which petitions regarding a Hartford Democratic Town Committee election slate were challenged, the court, on the first day of the court hearing, issued a temporary order directing the Hartford town and city clerk to delay the preparation and distribution of absentee ballots until the court hearing in his case was completed. *Arciniega* v. *Feliciano*, Superior Court, judicial district of Hartford, Docket No. CV-18-6088961-S, Entry #103 (February 21, 2018, *Shapiro, J.*) (66 Conn. L. Rptr. 83), aff'd in part, rev'd in part on other grounds, 329 Conn. 293, 184 A.3d 1202 (2018). In the *Arciniega* case, this order prevented the start of the primary election process.

With the primary election having begun and absentee ballots being cast, the risk of voter confusion discussed in *Purcell* is applicable, and the court must invoke the *Purcell* principle to ensure an orderly primary election process for the September 12, 2023 primary.

For the foregoing reasons, the defendant's motion to dismiss is granted.

Paul Robert Doyle, J.